

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 3981 OF 2005

Dr. Manikant Mishra ...Applicant

Versus

State of Maharashtra & Anr ...Respondents

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Mr. C.K. Pendse, Advocate for Applicant

Mr. Rajesh More, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 1ST JULY, 2005

P. C.:-

1. Heard the learned advocate for the applicant and the learned A.P.P. for the State.

2. The applicant is facing prosecution in a complaint under Section 138 of Negotiable Instruments Act. The said complaint has been filed before the learned Metropolitan Magistrate, 6th Court, Mazgaon, Mumbai and is numbered as 391/SS/2005 (old case No. 669/S/2002). It is the case of the applicant i.e. original accused that the complaint cannot be entertained by the learned Metropolitan Magistrate at Mazgaon as the said Court does not have territorial jurisdiction to entertain the complaint. Hence, he preferred an application before the learned

Metropolitan Magistrate for directions to be given to the complainant to present his complaint before the Court which had territorial jurisdiction. By order dated 10.3.2005, the learned Metropolitan Magistrate rejected the application preferred by the applicant.

3. The learned advocate for the applicant has placed reliance on para 14 of the decision of the Supreme Court in the case of **K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Anr** reported in **1999 All MR (Cri.) 1845 (SC)**. In the said case it is observed as under:-

"14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence: (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) Failure of the drawer to make payment within 15 days of the receipt of the notice.

4. The learned advocate for the applicant has

submitted that in view of the observations in the above para, the complaint can be filed only where these five acts have taken place. However, I find the contention to be incorrect as in the very same judgment in para 11 it is specifically stated that the place where the offence takes place would be interalia where the drawer or drawee resides or carries on business. It is an admitted fact that the complainant is carrying on business at Bellasis Road, Mumbai Central, Mumbai. The said address was within the jurisdiction of Mazgaon Court. The complaint has been filed by the complainant in the Mazgaon Court. In this view of the matter, no fault can be found with the order of the Magistrate. The said order is perfectly just, legal and proper. Hence, I find no merit in the present application.

5. Application is rejected.
